

Message Text

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ACTION EA-09

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INFO SECDEF WASHDC

JCS WASHDC

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CINCPACREPPHIL SUBIC

CG 13TH AF CLARK

C O N F I D E N T I A L SECTION 1 OF 3 MANILA 11509

CINCPAC ALSO FOR POLAD

FROM USDEL 176

E.O. 11652: GDS

TAGS: MARR, RP

SUBJECT: PHILIPPINE BASE NEGOTIATIONS: OFFICIAL SUMMARY

RECORD 7/30/76

TRANSMITTED BELOW IS THE TEXT OF THE OFFICIAL SUMMARY
RECORD FOR THE NEGOTIATING SESSION OF JULY 30, 1976.

QUOTE: THE PLENARY SESSION WAS CONVENED AT 9:30 A.M. THE
PANELS AGREED THAT DRAFT ARTICLES WHICH WERE CONSIDERED AND
APPROVED IN PLENARY SESSION WOULD BE SENT TO THE SECRETARIES
GENERAL TO BE CHECKED FOR STYLE AND CONSISTENCY WITH OTHER
ARTICLES, AND SUCH CHANGES AS WERE NECESSARY IN ANY ARTICLE
WOULD BE REFERRED TO THE TWO CHAIRMEN.

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"THE TWO PANELS THEN CONSIDERED THE DRAFT ARTICLES SUB-

MITTED BY THE LEGAL WORKING GROUP. THE DRAFT ARTICLES ENTITLED APPLICATION OF PHILIPPINE LAW (COPY ATTACHED AS ANNEX A) AND CLAIMS (COPY ATTACHED AS ANNEX B) WERE APPROVED AS SUBMITTED. AMBASSADOR SULLIVAN NOTED THAT THE AGREEMENT OF THE U.S. PANEL TO THESE ARTICLES, AS WELL AS SUBSEQUENT DRAFT ARTICLES SUBMITTED BY THE LEGAL GROUP, WAS SUBSEQUENT TO THE RESERVATION THAT CONSIDERATION OF SAID ARTICLES COULD BE REOPENED DEPENDING ON INSTRUCTIONS HE MAY RECEIVE FROM WASHINGTON.

"THE PANELS NEXT TOOK UP THE PARAGRAPH ON EVADING PHILIPPINE JURISDICTION. SOLICITOR GENERAL MENDOZA NOTED THAT THE LOCATION OF THE PARAGRAPH IN THE AGREEMENT HAD YET TO BE DETERMINED, AND ALSO SUGGESTED TWO MINOR CHANGES IN THE TEXT. THE CHANGES WERE ACCEPTED BY THE U.S. PANEL AND THE PANELS APPROVED THE PARAGRAPH (COPY ATTACHED AS ANNEX C) SUBJECT TO THE U.S. CAVEAT NOTED ABOVE.

"SOLICITOR GENERAL MENDOZA NOTED THAT IN THE VARIOUS ARTICLES SUBMITTED BY THE LEGAL GROUP THERE WERE SEVERAL TERMS WHOSE MEANING WOULD BE CONTINGENT ON THE ADOPTION OF AN ARTICLE ON DEFINITIONS. AMBASSADOR SULLIVAN SUGGESTED THAT THE LEGAL GROUP MIGHT BE ASSIGNED TO PREPARE DEFINITIONS OF TERMS OUTSIDE THE PURVIEW OF THE FACILITIES GROUP. AFTER SOME DISCUSSION, IT WAS AGREED THAT THE VARIOUS WORKING GROUPS WOULD DRAFT DEFINITIONS OF TERMS ARISING IN THEIR GROUPS AND SUBMIT THESE DEFINITIONS TO THE LEGAL GROUP FOR SUCH FURTHER ACTION AS NECESSARY.

"THE PANELS THEN CONSIDERED THE ARTICLE ON ADMISSION AND DEPARTURE OF U.S. PERSONNEL AND THE ACCOMPANYING DRAFT EXCHANGE OF NOTES WHICH IS PROPOSED TO BE EFFECTED CONCURRENTLY WITH THE SIGNING OF THE AGREEMENT. THE PANELS AGREED, WITH TWO MINOR CHANGES, ONE IN THE TEXT OF THE DRAFT ARTICLE AND ONE IN THE DRAFT EXCHANGE OF NOTES (COPIES ATTACHED AS ANNEXES D AND D-1), SUBJECT TO THE SAME CAVEAT OF THE U.S. PANEL CONCERNING INSTRUCTIONS IT WOULD RECEIVE FROM WASHINGTON.

"THE PANELS THEN DISCUSSED THE ARTICLE ON CRIMINAL
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JURISDICTION. AMBASSADOR SULLIVAN NOTED THIS ARTICLE MAY BE AN AREA WHICH WOULD REQUIRE HIGHER LEVEL RESOLUTION. COLONEL BUTLER NOTED THAT THERE WAS AGREEMENT IN PRINCIPLE ON LARGE PORTIONS OF THE TEXT, BUT THAT NONE OF IT HAD BEEN FORMALLY AGREED.

"SOLICITOR GENERAL MENDOZA NOTED THAT THE MAJOR AREAS OF DISAGREEMENT INVOLVED THE DEVISION OF PROCEDURE FOR FINAL

RESOLUTION OF OFFICIAL DUTY DETERMINATION, AND SUGGESTED THAT THE LEGAL GROUP SHOULD DISCUSS THE ARTICLE FURTHER BEFORE AN AD REFERENDUM TEXT IS SUBMITTED TO THE PANELS. FOLLOWING FURTHER DISCUSSION, IT WAS AGREED THAT THE LEGAL GROUP SHOULD CONSIDER FURTHER THE CRIMINAL JURISDICTION ARTICLE.

"THE PANELS AGREED THAT THE REMAINDER OF THE DAY AND MONDAY, AUGUST 2, WOULD BE SET ASIDE FOR WORKING GROUP MEETINGS AND THAT THE PLENARY WOULD RECONVENE ON TUESDAY AUGUST 3 AND 9:30 A.M. THE PLENARY ADJOURNED AT 11:00 A.M.

ANNEX A: APPLICATION OF PHILIPPINE LAW

"1. THE SOVEREIGNTY OF THE PHILIPPINES EXTENDS TO THE FACILITIES WITHIN PHILIPPINE MILITARY BASES WHICH HAVE BEEN DESIGNATED FOR U.S. USE. MEMBERS OF THE U.S. FORCES, MEMBERS OF THE CIVILIAN COMPONENT AND DEPENDENTS IN THE PHILIPPINES ARE OBLIGATED TO RESPECT THE LAWS OF THE PHILIPPINES AND ABSTAIN FROM ALL ACTIVITY INCONSISTENT WITH THIS AGREEMENT, INCLUDING ALL POLITICAL ACTIVITY IN THE PHILIPPINES. THE UNITED STATES ASSUMES THE OBLIGATION OF ADOPTING NECESSARY MEASURES TO THIS END.

"2. PHILIPPINE LAW APPLIES TO THE FACILITIES DESIGNATED FOR USE BY U.S. FORCES. THIS SHALL, HOWEVER, NOT PREJUDICE PARTICULAR EXEMPTIONS IN THE ENFORCEMENT OF PHILIPPINE LAW AS ARE EXPRESSED IN, OR IMPLIED BY, THIS AGREEMENT, OR OTHER AGREEMENTS RELATIVE TO THE USE OF THE FACILITIES. IN APPLYING PHILIPPINE LAW, U.S. AND PHILIPPINE OFFICIALS WILL TAKE INTO ACCOUNT GENERALLY ACCEPTED PRINCIPLES OF INTERNATIONAL LAW AND THE NEED TO INSURE THE EFFECTIVE USE OF THE FACILITIES.

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ANNEX B: CLAIMS.

"1. THE UNITED STATES SHALL PROMPTLY SETTLE AND PAY MERITORIOUS CLAIMS RESULTING FROM DAMAGE TO OR LOSS OR

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MC-02 ACDA-07 /066 W

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R 040320Z AUG 76

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 8368

INFO SECDEF WASHDC

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DESTRUCTION OF PROPERTY, BOTH REAL AND PERSONAL, OR PERSONAL INJURY OR DEATH OF A PERSON IN THE PHILIPPINES WHEN SUCH DAMAGE, LOSS, DESTRUCTION, INJURY OR DEATH IS CAUSED BY OR IS OTHERWISE INCIDENT TO NON-COMBAT ACTIVITIES OF THE UNITED STATES FORCES OR IS CAUSED BY INDIVIDUAL MEMBERS OR CIVILIAN EMPLOYEES THEREOF IN THE PHILIPPINES, PROVIDED THAT THE CLAIM IS PRESENTED WITHIN ONE YEAR AFTER THE ACT OR OMISSION FROM WHICH SUCH CLAIM ARISES. THE TERM "NON-COMBAT ACTIVITIES" DOES NOT EXCLUDE MANEUVERS, TRAINING, USE OF BOMBING AND GUNNERY RANGES AND SIMILAR ACTIVITIES.

"2. IN RECOGNITION THAT THE UNITED STATES AGREES TO PROCESS AND PAY SUCH MERITORIOUS CLAIMS WITHOUT PROOF OF NEGLIGENCE OR FAULT, THE UNITED STATES SHALL NOT BE REQUIRED TO SECURE NO-FAULT OR OTHER FORMS OF INSURANCE FOR MOTOR
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VEHICLES OWNED AND OPERATED BY UNITED STATES FORCES.

"3. NOTHING IN THIS ARTICLE SHALL AFFECT THE RIGHT OF THE INJURED PARTY TO BRING A CIVIL ACTION BEFORE A PHILIPPINE COURT AGAINST THE UNITED STATES GOVERNMENT OR THE INDIVIDUAL LIABLE UNDER PHILIPPINE LAW FOR DAMAGE

TO OR LOSS OR DESTRUCTION OF PROPERTY, BOTH REAL OR PERSONAL, OR INJURY OR DEATH OF A PERSON. SUCH A CIVIL ACTION MAY, HOWEVER, BE INSTITUTED ONLY IF THE CLAIM, BASED ON THE SAME DAMAGE OR INJURY FILED PURSUANT TO PARU 1 OF THIS ARTICLE, HAS NOT BEEN SETTLED AND PAID. WHERE SUCH A CIVIL ACTION IS INSTITUTED THE U.S. FACILITIES COMMANDER CONCERNED SHALL COOPERATE AND ASSIST PHILIPPINE AUTHORITIES IN THE SERVICE OR EXECUTION OF SUMMONS, WRITS, OR OTHER PROCESSES ISSUED BY THE COURT IN CONNECTION WITH THE CIVIL ACTION.

ANNEX C: (RP ARTICLE II, PARA 10; US ARTICLE XIV, PARA 13.)

"REFUGE".

"SHOULD ANY PERSON SEEKING TO EVADE THE JURISDICTION OF THE PHILIPPINES BE FOUND IN ANY OF THE FACILITIES WITHIN PHILIPPINE MILITARY BASES WHICH HAVE BEEN DESIGNATED FOR U.S. USE, OR IN A VESSEL OR AIRCRAFT OF THE U.S. WITHIN THE TERRITORY OF THE PHILIPPINES, SUCH PERSON SHALL BE SURRENDERED FORTHWITH TO THE PHILIPPINE BASE COMMANDER OR COMPETENT PHILIPPINE AUTHORITY. THE U.S. SHALL ALSO NOT ULLOW THE USE OF ANY OF ITS VESSELS OR AIRCRAFT WITHIN THE TERRITORY OF THE PHILIPPINES AS A MEANS FOR SUCH PERSON TO EVADE THE JURISDICTION OF THE PHILIPPINES.

ANNEX D: ADMISSION AND DEPARTURE OF U.S. PERSONNEL.

"1. FOR ADMISSION INTO AND DEPARTURE FROM THE PHILIPPINES OF PERSONS AUTHORIZED TO USE THE FACILITIES, CLARK AIR BASE AND SUBIC NAVAL BASE ARE DESIGNATED LIMITED PORTS OF ADMISSION AND DEPARTURE.

"2. SUBJECT TO THE OTHER PROVISIONS OF THIS AGREEMENT, THE FOLLOWING PERSONS MAY BE ADMITTED INTO AND MAY DEPART FOR THE PHILIPPINES THROUGH THE ABOVE LIMITED PORTS OF
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ADMISSION AND DEPARTURE.

(A) MEMBERS OF THE UNITED STATES ARMED FORCES,
U.S. CIVILIAN PERSONNEL AND THEIR DEPENDENTS.

(B) UNITED STATES CONTRACTOR EMPLOYEES AND
TECHNICAL PERSONNEL AUTHORIZED UNDER THIS AGREEMENT TO
WORK ON THE FACILITIES, AND THEIR DEPENDENTS.

(C) UNITED STATES CONTRACTOR EMPLOYEES AND
TECHNICAL PERSONNEL AND THEIR DEPENDENTS TRAVELING TO OR
FROM THE PHILIPPINES ON LEAVE OR IN DIRECT TRANSIT TO

ANOTHER PORT OF DESTINATION.

(D) CREW MEMBERS OF THIRD COUNTRY MILITARY
AIRCRAFT OR VESSELS WHICH HAVE BEEN GIVEN PRIOR CLEARANCE
FOR ADMISSION BY APPROPRIATE PHILIPPINE AND US AUTHORITIES.

(E) MEMBERS OF THE ARMED FORCES OF THIRD COUNTRIES
WHEN PRIOR APPROVA OF THEIR ADMISSION AND DEPARTURE HAS
BEEN GIVEN BY THE PHILIPPINE BASE COMMANDER.

(F) UNITED STATES GOVERNMENT OFFICIALS COMING TO
THE PHILIPPINES ON OFFICIAL BUSINESS OF A TEMPORARY NATURE.

(G) RETIRED MEMBERS OF THE UNITED STATES FORCES
AND THEIR DEPENDENTS.

(H) OTHER PERSONS AS MAY BE AGREED UPON BY BOTH
PARTIES.

"3. FOR ADMISSION INTO AND DEPARTURE FROM THE ABOVE LIMITED
PORTS OF ADMISSION AND DEPARTURE, THE FOLLOWING DOCUMENTATION
SHALL BE REQUIRED:

(A) MEMBERS OF THE UNITED STATES ARMED FORCES SHALL
POSSESS MILITARY IDENTIFICATION CARDS AND APPROPRIATE MILITARY
ORDERS. UPON THEIR ARRIVAL, PHILIPPINE IMMIGRATION
OFFICIALS SHALL STAMP ON THE MILITARY ORDER OR INDICATE ON
AN APPROPRIATE IMMIGRATION FORM, STATUS AND LENGTH OF STAY
AND THIS SHALL SERVE THE PURPOSE OF A VISA.
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(B) UNITED STATES CIVILIAN EMPLOYEES STATIONED IN THE
PHILIPPINES PURSUANT TO THIS AGREEMENT AND THEIR DEPENDENTS
AND U.S. CIVILIAN EMPLOYEES COMING TO THE PHILIPPINES ON
OFFICIALS BUSINESS OF A TEMPORARY NATURE IN CONNECTION WITH
THE FACILITIES AND DEPENDENTS OF MEMBERS OF THE UNITED
STATES FORCES STATIONED IN THE PHILIPPINES SHALL POSSESS
PASSPORTS AND ORDERS ISSUED BY THE APPROPRIATE MILITARY
AUTHORITIES. SUCH PERSONS WILL, HOWEVER, OBTAIN VISAS AT
THE LIMITED PORTS OF ADMISSION UPON ARRIVAL. IF PHILIPPINE
AUTHORITIES DENY A VISA TO ANY SUCH PERSON BECAUSE HE IS
NOT ENTITLED TO ENTER THE PHILIPPINES UNDER PHILIPPINE
IMMIGRATION LAW, THE U.S. AUTHORITIES RECOGNIZE THEIR OBLI-
GATION TO REMOVE SUCH PERSON UNDER PARA 5.

(C) ALL OTHER PERSONS SHLL NOT BE REQUIRED TO HAVE
MORE DOCUMENTATION THAN IS NORMALLY REQUIRED FROM ALIENS
AT REGULAR PORTS OF ADMISSION AND DEPARTURE OF THE
PHILIPPINES.

(D) THE PHILIPPINES SHALL CONSULT WITH THE UNITED STATES
IF CHARGES OR DOCUMENTATION OTHER THAN THOSE SPECIFIED IN
THIS AGREEMENT WILL BE REQUIRED FOR ADMISSION INTO OR

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INFO SECDEF WASHDC

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DEPARTURE FROM THE ABOVE LIMITED PORTS.

"4. MEMBERS OF THE UNITED STATES ARMED FORCES AND
UNITED STATES CIVILIAN PERSONNEL, CONTRACTOR EMPLOYEES AND
THEIR DEPENDENTS SHALL NOT BE REQUIRED TO REGISTER AS
RESIDENT ALIENS. THE UNITED STATES SHALL MAKE SUITABLE
ARRANGEMENTS FOR THEIR READY IDENTIFICATION AND STATUS
VERIFICATION BY PHILIPPINE AUTHORITIES WHENEVER NECESSARY.

"5. IF THE PHILIPPINES REQUESTS THE REMOVAL OF ANY
PERSON WHO IS IN THE PHILIPPINES BECAUSE OF THIS AGREEMENT,

INCLUDING ANY PERSON WHO MAY HAVE BEEN ADMITTED THROUGH THE
ABOVE MENTIONED LIMITED PORTS OF ADMISSION AND DEPARTURE,
THE UNITED STATES SHALL PROVIDE TRANSPORTATION FROM THE
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SUCH PERSON AND HIS DEPENDENTS
AND ASSUME
RESPONSIBILITY FOR THEIR DEPARTURE.

"6. IF THE STATUS OF ANY PERSON ADMITTED TO THE

PHILIPPINES PURSUANT TO THIS AGREEMENT IS ALTERED, THE
UNITED STATES SHALL NOTIFY THE PHILIPPINES SO THAT A CHANGE
IN STATUS MAY BE EFFECTED. THE UNITED STATES SHALL PROVIDE
TRANS-
PORTATION FROM THE PHILIPPINES AND ASSUME RESPONSIBILITY
FOR THE DEPARTURE OF ANY PERSON WHOSE STATUS UNDER THIS
AGREEMENT IS SO ALTERED OR TERMINATED AND WHO, UPON FIRST
APPLICATION, IS DENIED ADMISSION TO REMAIN IN THE PHILIPPINES
AND SHALL, PENDING SUCH DEPARTURE
PREVENT HIS BECOMING A
PUBLIC RESPONSIBILITY OF THE PHILIPPINES.

ANNEX D-1: (EXCHANGE OF NOTES)

"THE EMBASSY OF THE UNITED STATES OF AMERICA PRESENTS
ITS COMPLIMENTS TO THE DEPARTMENT OF FOREIGN AFFAIRS OF THE
REPUBLIC OF THE PHILIPPINES AND HAS THE HONOR TO REFER TO
ARTICLE---- OF THE US/RP MILITARY FACILITIES AGREEMENT CON-
CERNING THE ADMISSION AND DEPARTURE OF INDIVIDUALS AT THE
DESIGNATED LIMITED PORTS OF ADMISSION AT CLARK AIR BASE
AND SUBIC NAVAL BASE.

"THE EMBASSY UNDERSTANDS THAT IT IS AGREED THAT THE
PERSONS SPECIFIED IN ARTICLE ---- OF THE US/RP MILITARY
FACILITIES AGREEMENT MAY ALSO BE ADMITTED AND MAY DEPART
THROUGH THE REGULAR PORTS OF ADMISSION AND DEPARTURE OF
THE PHILIPPINES AND THAT, FOR SUCH ADMISSION AND DEPARTURE,
MEMBERS OF THE UNITED STATES ARMED FORCES SHALL HAVE THE
DOCUMENTATION SPECIFIED IN ARTICLE ----, PARA 3A.

"IF THE FOREGOING IS ACCEPTABLE TO THE GOVERNMENT OF
THE PHILIPPINES, THE EMBASSY PROPOSES THAT THIS NOTE AND
THE REPLY OF THE DEPARTMENT TO THAT EFFECT SHALL CONSTITUTE
AN AGREEMENT BETWEEN OUR TWO GOVERNMENTS, EFFECTIVE ON THE
DATE OF THE DEPARTMENT'S REPLY.
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"THE EMBASSY AVAILS ITSELF OF THIS OPPORTUNITY TO RENEW
TO THE DEPARTMENT OF FOREIGN AFFAIRS THE ASSURANCE OF ITS
HIGHEST CONSIDERATION. END QUOTE.

SULLIVAN

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